

SENATE BILL 2853

By Johnson

AN ACT to enact the "Community Conscious Internet
Services Provider Act of 2008".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Sections 1—6 of this act shall be known and may be cited as the
"Community Conscious Internet Services Provider Act of 2008".

SECTION 2. The general assembly finds that:

(1) Many individuals and businesses residing in Tennessee are deeply
concerned about the lack of effective regulation of pornography on the internet
and its easy accessibility to children and to employees during work hours or
using employer equipment;

(2) Many individuals and businesses residing in Tennessee are
consumers of internet access services;

(3) Many individuals and businesses residing in Tennessee want to be
informed consumers of internet access services but cannot effectively determine
the policies of an Internet Service Provider (ISP) with respect to pornography
without investing substantial time and effort on an individual and ad hoc basis;
and

(4) ISPs who are domiciled in Tennessee or who conduct business in
Tennessee and have policies that adhere to higher standards regarding
pornography deserve recognition for their efforts.

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Allocate" means distribute, delegate, lease, sublease, grant a license, give or any other means by which a Service Provider allows another person to use an IP Address;

(2) "Caches" means utilizing the process whereby an Internet Communication is duplicated or mirrored at an Internet Location other than the location of its origination;

(3) "Communication" includes all Internet Protocol (IP) and Transmission Control Protocol (TCP) Packet transmissions and includes all data types and materials transmitted via the internet. Such data types and materials include text, images, graphics, simulations, animations, video and audio. A response from an IP Address to any single request for an Internet Communication is considered a separate communication for purposes of this act;

(4) "Customer" means any person or entity that subscribes to or purchases from a Tennessee Provider any Internet Service;

(5) "Equipment owner" means any person who provides equipment for use in Hosting or Publishing content over the internet;

(6) "Harmful to minors" means any communication that:

(A) The average adult, applying a contemporary community standard, would find, taking the communication as a whole, is designed to appeal to, or is designed to pander to, prurient interest, or describes or depicts sexually explicit conduct;

(B) Depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post pubescent female breast; and

(C) Taken as a whole, lacks serious literary, artistic, political, or scientific value for minors;

(7) “Hoster” means any person who provides an Internet Location to one (1) or more customers;

(8) “Internet” means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide networks that employ the Transmission Control Protocol/Internet Protocol (TCP/IP) or a successor protocol to transmit information;

(9) “Location” means any site, destination, or other environment that can be accessed by means of the internet;

(10) “Internet protocol” means a data-oriented protocol used for communicating data across a packet-switched network;

(11) “Internet service” means any functionality provided to a customer for the purpose of accessing Internet Communications or publishing communications to the internet;

(12) “Internet Service Provider” means any person who is providing internet access; an equipment owner; a hoster; or a person who allocates an IP address;

(13) “Internet user” means any person who receives or transmits any communication over the Internet;

(14) “IP address” means a number that uniquely identifies a device that is connected to a computer network that is Internet protocol based;

(15) “Link” means functionality integrated into an internet location whereby an internet user can easily move to another internet location;

(16) “Obscene” means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that:

(A) The average person, applying contemporary community standards would find, taking the material as a whole is designed to appeal to, or is designed to pander to, the prurient interest;

(B) Depicts, describes, or represents, in a manner patently offensive, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and

(C) Taken as a whole, lacks serious literary, artistic, political, or scientific value;

(17) “Minor” means any person who is under seventeen (17) years of age and above fourteen (14) years of age.

(18) “Private and non-routable IP address” means the IP address ranges defined by Y. Rekhter et al., Best Current Practice: Address Allocation for Private Internets, RFC 1918 (1996), available at <http://www.ietf.org/rfc/rfc1918.txt?number=1918>, or any subsequent convention;

(19) “Pornography” means any communication that is obscene or harmful to minors;

(20) “Post” means the use of a process whereby a communication enters the internet;

(21) “Prohibited communication” means any communication that is either obscene or harmful to minors;

(22) “Proxy” means a process whereby an internet communication is processed by an intermediary as a means of masking the identity of any internet

user or permitting access to an open port from any device set to receive only community ports;

(23) “Publishing” means to broadcast, post, link, cache, or uses an IP Address to make or proxy a communication;

(24) “Sexually explicit conduct” has the meaning given that term in 42 U.S.C. § 13031(c)(5);

(25) “Take down” means to remove, disable, block or otherwise restrict access to a communication by internet users;

(26) “Transmission control protocol” means the protocol used as part of the Internet protocol suite to facilitate the transmission of data packets from sender to receiver in a reliable and ordered delivery method; and

(27) “User agreement” means any contract, including but not limited to as a licensing, service or billing contract, between an Internet Service Provider and its customers.

SECTION 3.

A Tennessee provider may voluntarily apply, as provided in Section 6 to be a recipient of the Tennessee community conscious internet provider seal (the “seal”). If awarded the seal, as provided in Section 6(c), the Tennessee provider may include in its advertising materials, whether written, digital or verbal, the phrase “Tennessee community conscious internet provider” and an image designated by Tennessee to represent the seal.

SECTION 4.

To be awarded a seal, a Tennessee provider must agree to:

(1) Prohibit, by contract, its customers from publishing any communication that is obscene or harmful to minors (together, prohibited communication);

(2) Take down any prohibited communication using its service within a reasonable time following the state provider's receipt of notice of the existence of such communication;

(3) Comply with a court order to take down any prohibited communication;

(4) Keep a record, for two (2) years following any allocation of an IP address under its control, excluding private and non-routable IP address(es), sufficient to reasonably identify:

(A) Each IP address allocated by or to the Tennessee provider;

(B) The date and time when such IP address was allocated; and

(C) The internet user who obtained such IP address;

(5) Cooperate with law enforcement in providing records sufficient to identify a customer, upon official request and reasonable proof of the commission of a crime involving such customer's use of the Tennessee provider's services;

(6) Reasonably respond to the attorney general and reporter, a district attorney general, the consumer affairs division of the department of commerce and insurance or any customer domiciled in Tennessee who makes a complaint to the Tennessee

provider regarding the existence of a prohibited communication on any internet location using the Tennessee provider's service; and

(7) Provide upon request by an appropriate Tennessee agency, office or commission, with reasonable promptness, sufficient information to verify its compliance with the terms of this act.

SECTION 5.

The Tennessee provider must include in its user agreement with its customers a conspicuous statement that:

(1) Publishing a communication that is obscene or harmful to minors as defined in this act is prohibited;

(2) The Tennessee provider will take down any prohibited communication after it receives notice of the existence of such communication;

(3) The Tennessee provider will comply with a court order to take down any prohibited communication;

(4) The Tennessee provider will keep a record, for two (2) years following any allocation of an IP address under its control, excluding private and non-routable IP address(es), sufficient to reasonably identify:

(A) Each IP address allocated by or to the Tennessee provider;

(B) The date and time when such IP address was allocated; and

(C) The internet user who obtained such IP address;

(5) The Tennessee provider will cooperate with law enforcement in providing records sufficient to identify a customer, upon official request and reasonable proof of the commission of a crime involving such customer's use of the Tennessee provider's services; and

(6) The Tennessee provider will reasonably respond to the attorney general and reporter, a district attorney general, the consumer affairs division of the department of commerce and insurance or any customer domiciled in the state who makes a complaint to the Tennessee provider regarding the existence of a prohibited communication on any internet location using the state provider's service.

SECTION 6

(a) To apply for the seal, the owner or an officer of a Tennessee provider must sign and complete the application form provided by the consumer affairs division of the department of commerce and insurance. An application for the seal may be filed during normal business hours with the consumer affairs division.

(b) Such application must be accompanied by a statement signed, under penalty of perjury, by the owner or an officer of a Tennessee provider stating that the Tennessee provider:

(1) Agrees to conform fully to the requirements set forth in Section 4 within one (1) month following the date on which the application is filed; and

(2) Agrees to stay in conformity with the requirements set forth in Section 4 for at least one (1) year following the date on which the application is filed, unless the application is denied.

(c) A Tennessee provider may apply using a form provided by the consumer affairs division of the department of commerce and insurance for a renewal of the award of the seal for additional one (1) year periods.

(d) The consumer affairs division of the department of commerce and insurance shall approve applications that conform to the standards of this act. The consumer affairs division shall promptly inform an applicant whether its application has been approved or denied.

(e) A Tennessee provider who has not been awarded the seal or who at any time does not meet the requirements set forth in Section 4 and nonetheless uses the phrase "Tennessee Community Conscious Internet Provider," or any part of that phrase or any misleadingly similar phrase, or an image of the seal or any misleadingly similar image commits a violation of the Consumer Protection Act compiled in title 47, chapter 18.

(f) The consumer affairs division of the department of commerce and insurance shall make available at its offices and on its website the requirements for being awarded the seal and a list of those Tennessee providers who have been awarded the seal and the date of their award or renewal.

SECTION 7. For the purposes of creating forms and otherwise implementing the provisions of this act, it shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, it shall take effect on July 1, 2008.